

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 23.3.2011*

+ **RSA No.289/2005**

DR.RAKESH VARMA Appellant
Through: Mr.B.Krishan, Advocate.

Versus

AIR FORCE GOLF CLUB Respondent.
Through: None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 05.7.2005 which had endorsed the finding of the trial judge dated 19.4.2004 whereby the suit filed by the plaintiff Dr.Rakesh Varma seeking permanent and mandatory injunction had been dismissed. Plaintiff had been working as a Chief Cardiologist and was Head of the Department of Cardiology in Safdarjung Hospital, New Delhi. He was well versed with the game of golf. He was enrolled as a temporary member; he was given to understand that his membership would be converted in a permanent membership and he had been availing the facilities of a temporary member of the club since 1996 ; however, now he was not allowed to do so; in spite of the requests these facilities were being denied to the

plaintiff. Suit was filed seeking such a relief.

2. In the written statement, the stand of the plaintiff was refuted.

3. Four issues were framed by the trial judge; they read as follows:

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ?OPP
2. Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for? OPP
3. Whether the suit is maintainable as presented in view of preliminary objection no.3 in the W.S.?
4. Relief.

4. All the issues were decided against the plaintiff. Suit of the plaintiff stood dismissed. This judgment of 19.4.2004 was the subject matter of a review. This review petition was filed on 01.7.2004. A review petition has to be filed within 30 days. This review petition was filed on 01.7.2004; it was beyond the period of limitation. There is no requirement of filing a certified copy of the impugned judgment along with the review petition. Review petition filed on 01.7.2004 was admittedly beyond limitation.

5. Be that as it may, reply to the said review application was filed by the defendant on 01.12.2004. On 02.3.2005 the review petition was dismissed. Appeal was filed by the appellant impugning the judgment and decree dated 19.4.2004 on 01.4.2005. Contention of the appellant is that this appeal was within limitation as within this intervening period he was pursuing his other legal remedy i.e. his review petition. This appeal filed on 01.4.2005 was admittedly not supported by a certified copy of the impugned judgment. In terms of the direction of the Court, certified copy of the judgment dated 19.04.2004 was filed on 26.5.2005. Impugned

judgment has noted that the appellant had applied for a certified copy of the judgment dated 19.4.2004 on 05.4.2005 which was made available to the appellant on 12.4.2005; till 05.4.2005 appellant had made no effort to obtain certified copy of the impugned judgment dated 19.4.2004. Impugned judgment had also noted that the appeal filed on 01.4.2005 was clearly barred by limitation. No explanation or reason for this delay has also been furnished. Impugned judgment had also noted that even before the first appellate court no application had been filed seeking condonation of delay for any of the aforementioned reasons. As such the appeal was dismissed.

6. The relevant extract of the finding in the impugned judgment reads as follows:

“ 4.It is admitted case of the appellant that suit filed by the appellant was dismissed on 19.04.2004 but the review petition was preferred by the appellant on 01.7.2004. As per the provision of Limitation Act the review petition could have been initiated by the appellant/plaintiff within 30 days from the date of order and since there is no requirement of filing the certified copy of the impugned order, therefore, there is no provision for deducting the time spent in obtaining the certified copies. Therefore, as admitted by the appellant the review petition filed by the appellant on 01.7.2004 was beyond the period of limitation of 30 days.

4.Further, the appeal against the order of the learned Trial court could also have been filed within 30 days of the order. After deducting the time therein spent by the appellant for obtaining certified copies. It is important to note when this appeal was filed by the appellant on 01.4.2005 before the learned District & Sessions Judge, the appeal was not supported within the certified copy of the impugned judgment/decree sheet. The same was filed as per the direction of this court, on 26.05.05. From perusal of certified copy of decree sheet/impugned judgment/impugned order filed by the learned counsel for the appellant, it is clear that the certified copy was applied on 05.04.05 which was available to the appellant on 12.04.05 whereas the copies have been filed in court on 26.6.05. Therefore, it is clear that appellant has not taken any step for procurement of the certified copy of the order dt.19.04.04

i.e. order of dismissal of suit originally till the date of filing of the present appeal. Hence appellant can not take benefit of deduction of period of obtaining certified copy from computation of the period of limitation of filing of the appeal.

5. From these facts, it is clear that the appellant could have filed the appeal against the impugned order dt.19.04.04 latest by 20.05.04 whereas the appeal has been preferred by the appellant on 01.04.05. Therefore, the appeal is barred by the limitation for at least about one year.

6. The appellant has not tendered any reason or explanation for delay in filing of the present appeal except that appellant was pursuing the legal remedy before the learned Trial court by way of review petition and when this review petition was dismissed on 02.03.05 the appellant has come in appeal against this order.

7. At this stage, it is important to note Order 47 of CPC clearly provides that in case the review petition is dismissed no appeal lies against that order and therefore appellant could not come in appeal against the order of dismissal of review petition as it is not maintainable before this court.

8. The appeal filed by the appellant against the order dated 19.04.04 is not maintainable because the period of limitation for filing the appeal had lapsed even at the date when the review petition was filed i.e. on 01.07.04. Therefore, the appellant cannot say and take benefit of pursuing the legal remedy of review before the learned Trial Court.

9. The negligence of the appellant is clear from the facts that even at the stage of filing of the appeal after almost delay of one year the appellant has not preferred to move application for condonation of delay and has not even applied for the certified copy of the impugned order till the date of filing of the appeal.

10. Therefore, I am of the opinion that the appeal preferred by the appellant is liable to be dismissed on the point of limitation and hence appeal is dismissed."

7. On 23.07.2009 this appeal was admitted and the following substantial questions of law were framed; they reads as follows:

"Whether the appellant court rightly construed the provisions of Limitation Act while coming to a conclusion that the appeal was barred by period of limitation?"

"Whether the finding in the impugned judgment dated 05.07.2005 are perverse? If so, its effect?"

8 There is no merit in the arguments urged before this Court. Appeal was rightly held to be time barred. Reliance by learned counsel for the appellant on the judgment reported in VI (2000) SLT 575 State of M.P. Vs. Pradeep Kumar is misplaced. The said judgment is distinct on its facts. In this case the Apex Court had noted that if the appeal is not accompanied by an application for condonation of delay it may amount to a curable defect and such a defect could be cured if an application seeking condonation of delay is filed subsequently. Admittedly no such application has been filed seeking condonation of delay before the first appeal court. This is also borne out from the record of the first appellate court. Nowhere has been recorded that there was any prayer even orally made by the appellant seeking permission to file such an application. There is no perversity.

9 Substantial questions of law are answered accordingly. They are against the appellant. Appeal has no merit. It is dismissed.

INDERMEET KAUR, J.

MARCH 23, 2011
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